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24 UNITED STATES DISTRICT COURT
25 NORTHERN DISTRICT OF CALIFORNIA
26 SAN FRANCISCO DIVISION

27 NATIONAL TPS ALLIANCE, MARIELA
28 GONZÁLEZ, FREDDY JOSE ARAPE RIVAS,
M.H., CECILIA DANIELA GONZÁLEZ
HERRERA, ALBA CECILIA PURICA
HERNÁNDEZ, E.R., HENDRINA VIVAS
CASTILLO, A.C.A., SHERIKA BLANC, VILES
DORSAINVIL, and G.S.,

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY, and UNITED STATES OF
AMERICA,

Defendants.

Case No. 3:25-cv-01766-EMC

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
(DKT. 122)**

Date: July 11, 2025

Time: 9:00 a.m.

Dept.: Courtroom 5, 17th Floor

Judge: Hon. Edward M. Chen

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INTRODUCTION

This Court already rejected nearly every argument in Defendants' motion to dismiss in its detailed order granting Plaintiffs' motion to postpone and subsequent rulings. As the Court made clear in those orders, the reduction of a fixed period of legal status and work authorization is injury sufficient to establish standing; neither the TPS statute nor Section 1252(f) bars Plaintiffs' claims or requested relief; the Secretary of Homeland Security lacks authority to vacate a TPS extension; even if the Secretary had vacatur authority, the vacatur of TPS for Venezuela was arbitrary and capricious; and "significant evidence" establishes that the decisions to vacate, partially vacate, or terminate TPS for Venezuela and Haiti were discriminatory. Dkt. 129 at 4-5. *See generally* Dkt. 93; Dkt. 102. These holdings are law of the case, and they suffice to reject Defendants' motion *in its entirety*.

The few new arguments Defendants raise are meritless. Defendants argue the APA would preclude this Court from reviewing a claim that the Secretary abused her discretion in assessing the national interest, but Plaintiffs make no such claim. Defendants also argue the Secretary’s termination of Venezuela’s TPS designation and partial vacatur of Haiti’s extension and redesignation would have been lawful if the Secretary had vacatur authority, but she does not. And even if she did, Plaintiffs have adequately alleged that both the Venezuela termination and the Haiti partial vacatur were contrary to law because, under the plain text of the TPS statute, national interest is a permissible consideration only when making an *initial* designation, not when conducting a periodic review. Plaintiffs have also adequately alleged that both decisions violate the APA because Secretary Noem failed to observe statutorily required procedures, and that the Haiti partial vacatur violates the APA because it was pretextual and based on the Secretary’s legally erroneous belief that there is a six-month default period for extension decisions.

The Supreme Court’s order granting a stay of this Court’s postponement order does not change this analysis. The stay order provides no reasoning and has no precedential effect. Further, the Supreme Court’s suggestion that a subset of TPS holders affected by the Venezuela vacatur may warrant preliminary relief indicates that it did not credit Defendants’ jurisdictional arguments. Rather, it appears the Supreme Court may have instead credited Defendants’ arguments with respect

1 to the proper scope of preliminary relief under 5 U.S.C. § 705—concerns which do not affect
 2 Plaintiffs’ ability to obtain final relief under 5 U.S.C. § 706. *See* Dkt. 144 (motion for interim relief
 3 after Supreme Court’s order). Accordingly, this court should deny Defendants’ motion.

4 BACKGROUND

5 This Court laid out the relevant background regarding the Venezuela vacatur and termination
 6 in its order granting Plaintiffs’ motion to postpone. Dkt. 93 at 3-13. In addition to challenging the
 7 Venezuela decisions that were the subject of the postponement motion, Plaintiffs’ First Amended
 8 Complaint also challenges the Secretary’s decision to “partially vacate” the July 1, 2024, extension
 9 and redesignation of Haiti for TPS.

10 Haiti was first designated for TPS in 2010 based on “extraordinary and temporary
 11 conditions” that prevent its nationals “from returning … in safety.” FAC ¶ 82. Haiti was
 12 redesignated and extended for TPS again in 2011; and subsequently extended for TPS in 2012, 2014,
 13 and 2015. FAC ¶¶ 82, 83.

14 Under the first Trump Administration, Acting Secretary Elaine Duke terminated TPS for
 15 Haiti. FAC ¶ 84. However, the termination never took effect due to legal challenges. *Ramos v.*
 16 *Nielsen*, 709 F. Supp. 3d 871, 877-79 (N.D. Cal. 2023). On August 3, 2021, in the wake of the
 17 assassination of Haitian President Jovenel Moïse, Secretary Mayorkas newly designated Haiti for
 18 TPS for an eighteen-month period on the basis of extraordinary and temporary conditions. FAC ¶ 88.
 19 On January 26, 2023, and again on July 1, 2024, Secretary Mayorkas both extended and
 20 redesignated TPS for Haiti. FAC ¶¶ 89-90. The July 2024 extension was due to “remain in effect for
 21 18 months, ending on February 3, 2026.” 89 Fed. Reg. 54484, 54485 (Jul. 1, 2024).

22 Less than one month after Secretary Noem’s confirmation, she partially vacated the July
 23 2024 TPS extension and redesignation for Haiti, reducing the period of protection from eighteen to
 24 twelve months and setting it to expire on August 3, 2025, instead of February 3, 2026. FAC ¶¶ 92-
 25 95. In the press release announcing her decision, DHS expressed that it was “part of President
 26 Trump’s promise to rescind policies that were magnets for illegal immigration and inconsistent with
 27 the law.” FAC ¶ 92. The release asserted that “[f]or decades the TPS system has been exploited and
 28 abused” and claimed that, though the extension predated the new administration by seven months,

1 “Biden and Mayorkas attempted to tie the hands of the Trump administration by extending Haiti’s
 2 Temporary Protected Status by 18 months.” *Id.*

3 As justification for the partial vacatur Secretary Noem cited (1) that the 2024 extension did
 4 not specify why an eighteen-month period was selected for extension, as opposed to a six- or twelve-
 5 month period; (2) that Secretary Mayorkas did not provide enough detail as to why TPS for Haitians
 6 was not “contrary to the national interest”; and (3) that the extension cited statistics from 2022-23, in
 7 addition to earlier years, alongside more proximate country conditions information. FAC ¶ 96.

8 STANDARD OF REVIEW

9 A motion to dismiss under Rule 12(b)(1) tests the subject matter jurisdiction of the court,
 10 while a motion under Rule 12(b)(6) tests the legal sufficiency of a claim. *See Fed. R. Civ. P.*
 11 12(b)(1), (6). Under both rules, courts must accept the plaintiff’s allegations as true and draw all
 12 reasonable inferences in the plaintiff’s favor. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir.
 13 2014); *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).¹ The rules require only a “short and
 14 plain statement of the claim” at the pleading stage; dismissal is improper if the plaintiff alleges
 15 enough facts to make the claim plausible on its face. *Fed. R. Civ. P.* 8(a)(2); *Bell Atl. Corp. v.*
 16 *Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual
 17 content that allows the court to draw the reasonable inference that the defendant is liable for the
 18 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

19 A motion to dismiss is not a proper vehicle for rearguing issues the court has previously
 20 decided. Where a party seeks reconsideration, that request must satisfy the standard for motions for
 21 reconsideration. Such motions should be granted only in “highly unusual circumstances,” such as
 22 based on “newly discovered evidence,” due to “clear error” by the court, or as a result of an
 23 “intervening change in the controlling law.” *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665
 24 (9th Cir. 1999); *see also Maraziti v. Thorpe*, 52 F.3d 252, 255 (9th Cir. 1995). Otherwise, the “law
 25 of the case” doctrine generally precludes a court from reconsidering an issue it has already decided.
 26 *Ingle v. Cir. City*, 408 F.3d 592, 594 (9th Cir. 2005). Courts have applied this doctrine to uphold

27 ¹ Defendants raise a “facial” rather than “factual” attack under Rule 12(b)(1). *See Leite*, 749 F.3d at
 28 1121-22.

1 prior decisions based on pure issues of law, even those made in the interim relief context. *See Lone*
 2 *Star Sec. & Video, Inc. v. City of Los Angeles*, 989 F. Supp. 2d 981, 989 (C.D. Cal. 2013), *aff'd*, 827
 3 F.3d 1192 (9th Cir. 2016); *Gonzalez v. Arizona*, 624 F.3d 1162, 1186 (9th Cir. 2010), *on reh'g en*
 4 *banc*, 677 F.3d 383 (9th Cir. 2012), *aff'd sub nom. Arizona v. Inter Tribal Council of Ariz., Inc.*, 570
 5 U.S. 1 (2013).

6 ARGUMENT

7 I. This Court Has Jurisdiction Over All of Plaintiffs' Claims

8 Defendants' assertion that Plaintiffs lack standing to challenge the partial vacatur of TPS for
 9 Haiti is unavailing. The challenged agency action has caused actual harm, and increased the risk of
 10 future harm, either of which suffices to confer standing. Every other jurisdictional argument
 11 Defendants raise is foreclosed by this Court's prior decision granting Plaintiffs' motion to postpone.
 12 Dkt. 93 at 14-30.

13 A. Plaintiffs Have Standing to Challenge the Partial Vacatur of Haiti's TPS Extension 14 and Redesignation, and Their Claims Are Ripe

15 Defendants assert Plaintiffs lack standing to challenge "a future termination of Haiti's TPS
 16 designation" because it "has yet to occur." Mot. 9. This Court already implicitly rejected this
 17 argument in granting relief to the beneficiaries of the 2021 TPS designation for Venezuela.
 18 Defendants' vacatur of the January 2025 TPS extension for Venezuela meant that 250,000
 19 Venezuelan TPS holders in the 2021 cohort will have their TPS status subject to review by
 20 September 2025, rather than October 2026. While the Secretary has not yet made a decision about
 21 whether these Venezuelan TPS holders will lose their status in September 2025, the fact that they
 22 have lost 13 months of legal status previously granted under the January extension (as this Court
 23 recognized, Dkt. 93 at 6, 13) sufficed for this Court to treat their claims as ripe. *See id.* at 34-36
 24 (describing harms to Venezuelan TPS holders protected by both the 2021 and 2023 designations); *id.*
 25 at 1 (describing Secretary's vacatur as "taken against over 600,000 Venezuelan" TPS holders).
 26 Defendants never explain how this Court's decision that the 2021 cohort of Venezuelan TPS holders
 27 have suffered an injury comports with their theory.

28 In any event, Plaintiffs do not challenge "a future termination" as to Haiti. Mot. 9. Plaintiffs

1 challenge the Secretary’s February 24, 2025, partial vacatur. The partial vacatur moved up the
 2 expiration of Plaintiffs’ lawful status and work authorization by six months—causing immediate,
 3 actual injury. The partial vacatur also exposes Plaintiffs to the risk of losing TPS as soon as August
 4 3, 2025, six months earlier than would have been possible under the July 1, 2024, decision—creating
 5 an imminent risk of increased harm. Both this immediate injury and this increased risk of future
 6 harm are sufficient to confer standing and render ripe for decision Plaintiffs’ challenge to the Haiti
 7 partial vacatur.

8 As this Court has recognized, “[a]lthough … TPS designations … are only temporary, they
 9 still afford TPS holders with concrete, meaningful relief: for a *fixed time*, TPS holders have both the
 10 right to work and the right to be free from removal, which give not only stability but also security in
 11 their lives and time with their families” Dkt. 93 at 37 (emphasis added). By reducing the “fixed
 12 time” provided under the July 1, 2024, extension and redesignation for Haiti, the partial vacatur
 13 inflicted a concrete injury sufficient to confer standing. *Cf. Utah Animal Rts. Coal. v. Salt Lake City*
 14 *Corp.*, 371 F.3d 1248, 1256 (10th Cir. 2004) (holding that reduction of time available to plaintiff to
 15 organize demonstrations was sufficient to establish standing). For example, NTPSA member Stanley
 16 Louis, who has TPS under Haiti’s 2023 designation, recently was unable to accept an airport security
 17 position he interviewed for because the job required proof of employment authorization valid for at
 18 least six months. FAC ¶ 179(e). Prior to the partial vacatur, Stanley could meet this requirement;
 19 afterward, he could not. *See* 90 Fed. Reg. 10511 at 10514 (Feb. 24, 2025) (directing “[e]mployers”
 20 to “update their records to note that” work permits with February 3, 2026 expiration dates are now
 21 valid only “through August 3, 2025”). That concrete injury is unquestionably sufficient to confer
 22 standing.

23 The partial vacatur also exposes Plaintiffs to the risk of losing lawful status and work
 24 authorization as soon as August 3, 2025, a risk they would otherwise not have faced until six months
 25 later. An “increased risk of harm can itself be injury in fact sufficient for standing.” *Ecological Rts.*
 26 *Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1151 (9th Cir. 2000) (finding “threatened environmental
 27 injury” sufficient to confer standing). Similarly, exposing Plaintiffs to an opportunity to be
 28 considered for loss of status constitutes cognizable injury, even without a guarantee that status will

1 be lost. *See Serrato v. Clark*, 486 F.3d 360, 566 (9th Cir. 2007) (holding that loss of opportunity to
 2 be considered for a program that could reduce incarceration constitutes an injury-in-fact, even
 3 without a guarantee of acceptance to the program). In the face of this unexpected and destabilizing
 4 risk, Plaintiff A.C.A. “has been experiencing severe anxiety and nightmares about being deported”
 5 and Plaintiff G.S., a trained medical doctor who works as a housing case manager, has been left
 6 feeling “hopeless and drained of motivation.” FAC ¶¶ 187, 190. And even in the unlikely event that
 7 the Secretary issues the maximum permissible extension of TPS for Haiti at some point this summer,
 8 Haitian TPS holders would still have received six months less status than they would have received
 9 absent the vacatur they challenge here.

10 In any event, while Defendants assert that the risk that Haiti’s TPS will be terminated in
 11 August is “mere[] speculat[ion],” Mot. 9, Plaintiffs have plausibly alleged that termination for Haiti
 12 is likely. *See Dkt. 129* (noting that an extension of Haiti’s TPS designation “seems unlikely in light
 13 of the Secretary’s rationale for the partial vacatur”). Secretary Noem has reiterated her position that
 14 “[TPS] has been abused and manipulated,” that TPS holders are “violat[ing] our laws,” and that
 15 “extensions going forward” will not proceed as they had been. FAC ¶¶ 107, 108. President Trump
 16 has stated that he considers TPS unlawful and will revoke TPS for Haitian TPS holders: “You have
 17 to remove [Haitian TPS holders in Springfield]; you cannot destroy our country ... In my opinion,
 18 it’s not legal. ... Absolutely I would revoke [TPS].” FAC ¶ 112. *See also* ¶¶ 105-168.

19 **B. The TPS Statute Does Not Bar Review of Plaintiffs’ Claims**

20 Defendants argue that 8 U.S.C. § 1254a(b)(5)(A) bars review of Plaintiffs’ claims, but their
 21 position is foreclosed by this Court’s decision granting Plaintiffs’ motion for postponement, Dkt. 93
 22 at 23-28, as well as its prior decision in *Ramos v. Nielsen*, 321 F. Supp. 3d 1083 (N.D. Cal. 2018), to
 23 which this Court “adheres.” Dkt. 93 at 24. To summarize, the word “determination” in Section
 24 1254a(b)(5)(A) refers to the Secretary’s conclusion that a nation satisfies certain country conditions
 25 requirements relevant to TPS decisionmaking. “Determination” does *not* refer to predicate legal
 26 judgments such as whether the agency has inherent authority to vacate prior extensions or whether
 27 the statute permits the Secretary to terminate TPS based on “national interest.” Nor does
 28 “determination ... under *this* subsection” in Section 1254a(b)(5)(A) refer to issues addressed in *other*

1 subsections, such as TPS registration processes—which are discussed in subsection (c) rather than
 2 (b). This Court’s legal conclusions as to jurisdiction are law of the case, and Defendants offer no
 3 reason to depart from those well-considered rulings.²

4 Defendants again contend that this Court lacks jurisdiction to review even constitutional
 5 claims. Mot. 9. The Court already rejected that argument as well. Dkt. 93 at 27-28. The statute
 6 provides no evidence, much less “clear and convincing,” of Congress’s intent to bar constitutional
 7 review. Defendants present no reason to reconsider this analysis here.

8 **C. The APA Does Not Bar Review of Plaintiffs’ Claims**

9 Defendants make a distinct jurisdictional argument that the Secretary’s “national interest”
 10 determination is not subject to review because it is “committed to agency discretion by law,” under 5
 11 U.S.C. § 701(a)(2). But Plaintiffs do not argue that the Secretary abused her discretion in assessing
 12 the national interest. Rather, they contend she committed legal error in applying that criterion at all,
 13 because the statute’s plain text makes clear that the Secretary is only to assess “national interest” at
 14 the time of initial designation. FAC ¶¶ 206(c), 210(h); *see infra* II.B.2. Similarly, as to her partial
 15 vacatur of TPS for Haiti, she committed legal error in asserting that a Secretary is obliged to
 16 specifically explain why an extension is not contrary to the national interest because the statute
 17 imposes no such requirement. FAC ¶ 210(i). The APA’s provision limiting review of discretionary
 18 decisions does not bar claims that challenge the agency’s failure to apply the proper statutory
 19 criteria. If the Secretary granted a TPS extension for five years claiming that timeline was in the
 20 national interest, courts would still have power to review whether that invocation of “national
 21 interest” was consistent with the statute’s requirements. So too here. *Cf. Guerrero-Lasprilla v. Barr*,
 22 601 U.S. 209, 210 (2024) (finding legal questions reviewable notwithstanding jurisdiction-stripping

24 ² To the extent that Defendants now argue the Venezuela termination order may stand separate from
 25 the vacatur order, Mot. 10, that argument is contrary to the position they took in the United States
 26 Supreme Court. *See* Dkt. 114-2, Gov. Stay Appl. 18 n.12. It is also wrong. Absent the vacatur,
 27 Secretary Mayorkas’s January 17 extension extends TPS for all Venezuelan beneficiaries until
 28 October 2026. The termination has no legal effect unless coupled with the vacatur. Moreover, the
 Secretary’s conclusion that she has authority to end an extension before its end-date is reviewable
 regardless of whether the document in which it operates is labeled a vacatur or a termination,
 because it is a legal conclusion rather than a “determination … under [subsection (b)].”

1 provision barring review of discretionary determinations).

2 **D. Section 1252(f) Does Not Preclude Relief**

3 Defendants also repeat their argument that Plaintiff's claims are "jurisdictionally barred"
 4 under 8 U.S.C. § 1252(f)(1). Mot. 13. That contention is foreclosed by this Court's detailed analysis
 5 and resolution of this question. Dkt. 93 at 15-22. As this Court has already explained, postponement
 6 relief under Section 705 and "vacatur" relief under Section 706 are not injunctive. The Court need
 7 go no further to reject Defendant's Motion to Dismiss.

8 To be clear, Plaintiffs do not agree with Defendants' assertion that Section 1252(f)(1)'s bar
 9 on injunctive relief necessarily extends to Section 1254a (the TPS statute). While Defendants are
 10 correct that Section 1254a came within Part IV of the Immigration and Nationality Act at the time
 11 IIRIRA was enacted in September 1996, the Ninth Circuit has instructed that courts should focus on
 12 whether the provisions at issue were "*amended by the [IIRIRA] of 1996.*" *Galvez v. Jaddou*, 52 F.4th
 13 821, 831 (9th Cir. 2022) (emphasis added in *Galvez*) (citing Section 1252(f)(1)). *Galvez* held that an
 14 injunction covering a provision of the Trafficking Victims Protection Act of 2008 (TVPRA) was not
 15 barred by Section 1252(f)(1) even though that provision of the TVPRA was "within Title 8, Chapter
 16 12, Subchapter II of the United States Code," because it was enacted more than a decade after
 17 Section 1252(f)(1), and therefore was "certainly not a provision of the INA '*as amended by the*
 18 [IIRIRA] of 1996,' 8 U.S.C. § 1252(f)(1)." *Galvez*, 52 F.4th at 831.

19 Like the TVPRA, the TPS statute was not substantively "amended" by IIRIRA, albeit for a
 20 different reason. The TPS statute was enacted several years before IIRIRA, but IIRIRA did not
 21 amend the text of the TPS statute (apart from changes in nomenclature that IIRIRA implemented
 22 throughout the immigration code). Because IIRIRA did not change the substantive provisions of the
 23 TPS statute, it is not a part of the INA "as amended by" IIRIRA.

24 This reading makes sense in light of Section 1252(f)(1)'s legislative history. The House
 25 Judiciary Committee Report that recommended enactment of what would become Section 1252(f)(1)
 26 explained that subparagraph (f) "limits the authority of Federal courts other than the Supreme court
 27 to enjoin the operation of the *new removal procedures* established in *this legislation.*" H.R. Rep. No.
 28

1 104-469, pt. 1, at 161 (emphasis added).³ The language of Section 1252(f)(1) thus reflects a specific
 2 concern about injunctions interfering with the operation of IIRIRA's *new* removal procedures, not
 3 interference with the TPS statute, which was enacted years earlier and not substantively amended by
 4 IIRIRA.

5 Although Plaintiffs do not agree with Defendant's reading of Section 1252(f)(1), the Court
 6 should not reach this issue at this time. Plaintiffs have not moved for injunctive relief or any form of
 7 "coercive order," Mot. 12. Given this Court's conclusion that the relief afforded by Sections 705 and
 8 706 is not injunctive in nature, there is no need for the Court to address what is now only a
 9 hypothetical question. Because the Court has already held that Section 1252(f)(1) is not a
 10 jurisdictional bar to Plaintiffs' claims, it need not decide whether Plaintiffs could obtain an
 11 injunctive order they may never seek.

12 **II. Plaintiffs Adequately Alleged that the Challenged Decisions Violate the APA**

13 Plaintiffs have adequately alleged that the Secretary's decisions to vacate and terminate
 14 Venezuela's 2023 TPS designation and to partially vacate Haiti's 2024 TPS extension and
 15 redesignation violate the APA because they exceed her statutory authority, rest on legal errors, fail to
 16 consider obvious alternatives, are pretextual, and fail to follow procedures required by law. 5 U.S.C.
 17 § 706(2). In arguing otherwise, Defendants primarily rehash arguments the Court has already
 18 rejected, and which are thus foreclosed. Their new arguments are similarly unavailing.

19 **A. Plaintiffs Adequately Allege that the Venezuela Vacatur Violated the APA (First 20 Claim)**

21 **1. The Secretary Lacked Authority to Vacate Venezuela's Extension**

22 As this Court has held, Secretary Noem's assertion of "inherent authority" to reconsider prior
 23 TPS decisions, Mot. 14, "is at odds with the structure of the TPS statute." Dkt. 93 at 44-55. The TPS
 24 statute forecloses vacatur authority because it lays out specific processes for altering TPS
 25 designations and because the statute's "use of a fixed term" is "affirmatively inconsistent with
 26 positing an implied power to revoke a license at any time," Dkt. 93 at 51 (quoting *China Unicom
 27 (Ams.) Ops. Ltd. v. FCC*, 124 F.4th 1128, 1148 (9th Cir. 2024)). Defendants make no attempt to
 28

³ See also Jill E. Family, *Another Limit on Federal Court Jurisdiction? Immigrant Access to Class-Wide Injunctive Relief*, 53 Clev. St. L. Rev. 11, 30 (2005) ("Congress meant only to block injunctive relief halting the functioning of the new system").

1 engage with this Court’s previous analysis, simply repeating arguments this Court has already
 2 rejected. *Compare* Mot. 14 (asserting vacatur authority under 8 U.S.C. §§ 1103(a) and 1254a) *with*
 3 Dkt. 93 at 45-46 (holding that 8 U.S.C. §§ 1103(a) and 1254a “do not give [the Secretary] authority
 4 to vacate”); Mot. 14 (arguing that *China Unicom* supports finding of vacatur authority) *with* Dkt. 93
 5 at 51 (holding that, under *China Unicom*, the TPS statute’s “clear temporal expectations ... and clear
 6 stated terms for extensions and terminations of TPS designations are ... affirmatively inconsistent
 7 with ... positing an implied power to revoke or vacate a prior designation (or extension)” (quoting
 8 *China Unicom*, 124 F.4th at 1148)).⁴ Defendants provide no reason for the Court to reconsider its
 9 well-reasoned analysis.

10 Further, by purporting to invalidate TPS-related documentation already issued, the vacatur
 11 violates Subsection (d)(3) of the TPS statute. 90 Fed. Reg. 8805 at 8807 (Feb. 3, 2025) (stating that
 12 USCIS “will invalidate” TPS-related documentation issued pursuant to the January 2025 extension).
 13 The Supreme Court specifically cited Subsection (d)(3) when it stated that its stay “is without
 14 prejudice to any challenge to Secretary Noem’s February 3, 2025 vacatur notice insofar as it purports
 15 to invalidate” certain TPS-related documents. Dkt. 144-1. That provision provides that even a lawful
 16 termination of a country’s TPS designation “shall only apply to documentation and authorization
 17 issued or renewed after the effective date of the publication of notice” of the termination. 8 U.S.C. §
 18 1254a(d)(3). *See also* 8 C.F.R. § 244.12(a)-(c) (providing that employment authorization remains
 19 valid until the “date stated on the employment authorization document” even if TPS status is
 20 subsequently withdrawn or denied). While Section (d)(3) explicitly refers only to termination, the
 21 clear implication is that the Secretary lacks authority to invalidate documentation issued before the
 22 effective date of *any* notice purporting to alter a country’s TPS designation, including the Venezuela
 23 vacatur.

24

25 ⁴ This Court has also rejected Defendants’ argument, Mot. 15-16, that “foreign policy” or “national
 26 security” considerations provide the government with reconsideration authority otherwise foreclosed
 27 by statute. Dkt. 93 at 16-17, 53-54 (“Congress did not create a national security exception to the
 28 framework it prescribed for the termination of TPS status.”); *see also* Def.’s Opp. to Mot. to
 Postpone, Dkt. 60 at 15-16 (making same argument). In any event, the Venezuela vacatur was not
 based on national security or foreign policy justifications. *See* Dkt. 93 at 61.

2. The Venezuela Vacatur was Arbitrary and Capricious

Whether or not the Secretary has vacatur authority in general, Plaintiffs have adequately alleged a distinct claim that the Venezuela vacatur violated the APA because it was arbitrary and capricious for at least three independent reasons, each of which this Court already credited. Dkt. 93 at 55-59. First, the vacatur was founded on legal error. Dkt. 93 at 55-58. Contrary to Secretary Noem’s assertion, “the practical operation of the extension of the 2023 Designation was not ‘novel,’ did not engender undue confusion as to registration, and was entirely consistent and compliant with the TPS statute.” *Id.* at 58. Second, the Secretary arbitrarily failed to consider obvious alternatives to vacatur. *Id.* at 58-59. Defendants do not argue otherwise here. Mot. 17 (asserting without argument that Secretary’s failure to consider deconsolidation was not arbitrary and capricious). Third, the vacatur was pretextual: “[C]onfusion was not [the Secretary’s] concern so much as the desire to totally undo Secretary Mayorkas’s decision.” Dkt. 93 at 59. *See also* Dkt. 129 at 5-6 (“The record provided by Plaintiffs, while obviously not identical, presents an equally troubling set of circumstances” as those in *Dep’t of Com. v. New York*, 588 U.S. 752 (2019)). Defendants provide no reason to reconsider the Court’s analysis, and the law of the case prevents it.

Finally, Plaintiffs also plausibly allege the Venezuela vacatur violated the APA because Defendants failed to conduct statutorily required consultation or country conditions review. FAC ¶¶ 63-71, 202(h). The TPS statute requires that the Secretary conduct regular periodic reviews, including “consultation with appropriate agencies of the Government” and a “review [of] the conditions in the foreign state,” to assess whether a country’s TPS designation should be extended or, instead, terminated. 8 U.S.C. § 1254a(b)(3)(A). While the TPS statute’s periodic review provision does not mention vacatur, its periodic review provisions clearly contemplate that any decision that affects a country’s TPS decision must be based on consultation and country conditions review. Accordingly, even assuming the Secretary has authority to vacate a TPS decision, such authority may be exercised only after inter-agency consultation and a review of country conditions.

Nonetheless, it is clear from the face of the vacatur notice that the Secretary's decision was not based on consultation with the State Department or any other agency. *Compare* 90 Fed. Reg. 8805 (failing to state that decision was made in consultation with any other agency) *with, e.g.*, 81

1 Fed. Reg. 66059, 66060 (Sept. 16, 2016) (terminating TPS for Liberia “[b]ased on [country
 2 conditions] reviews and after consulting with DOS”); 65 Fed. Reg. 33356 (May 23, 2000)
 3 (terminating TPS for Kosovo based on “review of conditions by the Departments of Justice and
 4 State”). Nor was it based on any “review [of] conditions in the foreign state ...[to] determine
 5 whether the conditions for such designation ... continue to be met.” 8 U.S.C. § 1254a(b)(3)(A).
 6 Rather, the Secretary stated only that she would “determine, by February 1, 2025, whether to extend
 7 or terminate the 2023 Venezuela TPS designation.” 90 Fed. Reg. 8805 at 8807.

8 **B. Plaintiffs Adequately Allege that the Termination of Venezuela’s 2023 TPS
 9 Designation Violated the APA (Second Claim)**

10 Plaintiffs adequately allege Secretary Noem’s decision to terminate Venezuela’s 2023
 11 designation violated the APA because she failed to conduct the consultation and country conditions
 12 review required by statute, and her decision was founded on legal error. FAC ¶ 206(d)-(f).

13 **1. The Termination Did Not Observe Procedure Required by Law**

14 Plaintiffs have alleged, and Defendants do not contest, that under the TPS statute, a
 15 termination decision may be made only after “consultation with appropriate agencies of the
 16 Government” and a “review [of country] conditions.” 8 U.S.C. § 1254a(b)(3)(A). That process
 17 “typically begins months before” a decision is due. FAC ¶¶ 37-40 (describing standard review
 18 process); *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1082 (N.D. Cal. 2018) (same).⁵ Yet on February
 19 1, 2025, just *three days* after Secretary Noem decided to vacate Venezuela’s TPS extension—at
 20 which time she represented that she had not yet “determined ... whether to extend or terminate” the
 21 designation itself,” 90 Fed. Reg 8805 at 8807 (Feb. 3, 2025)—she “decided to terminate.” FAC ¶ 72.
 22 Plaintiffs’ complaint plausibly alleges that meaningful consultation and review could not, and did
 23 not, occur on this timeframe. FAC ¶¶ 72-81, 206(d),(f). *See, e.g., Calif. Wilderness Coal. v. Dep’t of
 24 Energy*, 631 F.3d 1072, 1088 (9th Cir. 2011) (discussing cases defining agency consultation
 25 requirements and noting the consultation is an “affirmative duty,” that must be “meaningful” and
 26

27 ⁵ See also GAO, *Temporary Protected Status: Steps Taken to Inform and Communicate Secretary of
 28 Homeland Security’s Decisions* 20-21 (Apr. 2020), available at <https://www.gao.gov/products/gao-20-134> (explaining that review process typically begins six months before expiration of designation).

1 must occur *before* making a decision) (internal quotation marks and citations omitted).

2 The Certificated Administrative Record (CAR) for the Venezuela termination confirms the
 3 plausibility of Plaintiffs' claim. It shows that Defendants deviated substantially from the normal TPS
 4 decision making process. The termination notice states that DHS "in consultation with the
 5 Department of State, has reviewed conditions in Venezuela." 90 Fed. Reg. at 9042. *See also* Mot. at
 6 19 (stating that termination was based on information provided by USCIS and DOS). But the only
 7 country conditions reports in the CAR pre-date the January 17, 2025 extension, were apparently
 8 prepared as part of the periodic review process for *that* extension decision, and overwhelmingly
 9 support the conclusion that conditions in Venezuela remain dire. *See* Dkt. 104-4 at VZ
 10 Termination_0211-221 (State Department recommendation dated Sept. 2024 detailing ongoing
 11 "complex emergency" in Venezuela and recommending 18-month extension and redesignation);
 12 Dkt. 104-8 at VZ Termination_0424-0454 (USCIS country conditions report dated August 2024
 13 describing Venezuela's "complex, serious, and multidimensional humanitarian crisis"). The sum total
 14 of inter-agency "consultation" regarding the *termination* decision appears to consist of a two-page
 15 letter from Secretary of State Marco Rubio, which assesses only "the national interest of the United
 16 States" and says nothing about country conditions in Venezuela. Dkt. 104-4 at VZ Termination
 17 0222. The rest of the CAR consists almost entirely of Executive Orders and old Federal Register
 18 notices, reports, and articles—some of which appear to have been downloaded from the internet
 19 weeks *after* the Secretary announced her decision, only after this case was filed. *See* Index of
 20 Administrative Record – Venezuela Termination, Dkt 104; Dkt. 104-1 at VZ Termination_0042
 21 (noting download date of March 7 in upper left); Dkt. 104-4 at VZ Termination_0160 (same); *id.* at
 22 VZ Termination_0224 (same); *id.* at VZ Termination 0272 (same).

23 **2. The Termination was Contrary to Law**

24 Plaintiffs also allege the termination was contrary to law for two reasons. First, the
 25 termination was unlawful because it was predicated on the unlawful vacatur. The premise of the
 26 termination was that "[t]he 2023 designation of Venezuela for TPS is set to expire on April 2, 2025,"
 27 and so "a determination whether to extend the 2023 Venezuela designation was due by February 1,
 28 2025." 90 Fed. Reg. 9040, 9040-9041 (Feb. 5, 2025). However, if this Court grants Plaintiffs'

1 request to set aside the vacatur as in excess of the Secretary's authority, then that premise is false.
 2 Instead, the January 17, 2025 extension remains in effect; the 2023 TPS designation of Venezuela
 3 does not expire until October 2, 2026; a determination whether to extend the 2023 designation is not
 4 due until August 3, 2026; and any termination "shall not be effective earlier" than October 2, 2026. 8
 5 U.S.C. § 1254a(b)(3)(B). Because the Secretary's termination decision was based on the contrary
 6 (and legally erroneous) belief that the TPS periodic review process required a decision by February
 7 1, 2025; because it unlawfully set a termination effective date *before* October 2, 2026; and because it
 8 was based on conditions that may change materially before the next periodic review is required, it
 9 must be set aside along with the vacatur.

10 Second, the TPS statute does not permit the Secretary to terminate a TPS designation based
 11 on a conclusion that the designation is contrary to the national interest. FAC ¶¶ 76; 206(c).
 12 Defendants suggest Plaintiffs ignore the statutory language, but it is Defendants who neglect the text.
 13 Mot. 19. Section 1254a(b)(1) governs initial TPS designations. It requires that the Secretary consider
 14 "national interest" when designating a country for TPS based on extraordinary and temporary
 15 conditions. 8 U.S.C. § 1254a(b)(1)(C). But it does not permit the Secretary to consider national
 16 interest in making *other* TPS-related decisions. For example, national interest is not identified as a
 17 factor to consider when designating a country for TPS based on armed conflict or environmental
 18 disasters. *Id.* at § 1254a(b)(1)(A)-(B). Nor, as relevant here, is national interest identified as a
 19 permissible consideration during the periodic review process. *Id.* at § 1254a(b)(3). Rather, during
 20 periodic review, the Secretary must review "the *conditions in the foreign state*" and determine
 21 whether the "*foreign state ... continues to meet the conditions for designation under paragraph (1).*"
 22 *Id.* at § 1254a(b)(3)(A) (emphasis added). In other words, the statute directs the Secretary to focus
 23 on conditions in the country designated for TPS, not conditions in the United States. Defendants'
 24 contrary interpretation—that the periodic review provision requires the Secretary to consider
 25 whether the "foreign state continues to meet the condition" that "permitting the aliens to remain
 26 temporarily in the United States is [not] contrary to the national interest of the United States"—
 27 makes no sense, particularly given the statute's overarching purpose to bring objectivity to TPS
 28

1 decisionmaking.⁶ FAC ¶ 32 & n.8. Moreover, consistent with Plaintiffs' interpretation of the TPS
 2 statute, in the 35-year history of the program, no Secretary has *ever* terminated a TPS designation on
 3 the basis that it was "no longer in the national interest." FAC ¶ 76. Accordingly, Plaintiffs have
 4 adequately stated a claim that Secretary Noem's decision to do so here was contrary to law.

5 **C. Plaintiffs Adequately Allege that the Partial Vacatur of Haiti's TPS Extension
 6 and Redesignation Violated the APA (Third Claim)**

7 **1. The Secretary Lacked Authority to Partially Vacate Haiti's Extension
 8 and Redesignation**

9 As discussed, *supra* Pt. II.A.1, the Secretary lacks authority to vacate a TPS extension. *See also*
 10 Dkt. 93 at 44-55. Secretary Noem's partial vacatur of Haiti's extension and redesignation is
 11 unlawful for the same reasons this Court found her vacatur of Venezuela's extension unlawful.
 12 Specifically, the TPS statute's fixed time-periods and "clear stated terms for extensions and
 13 terminations of TPS designations are ... 'affirmatively inconsistent with ... positing an implied
 14 power to revoke' or vacate a prior designation (or extension)." Dkt. 93 at 51 (quoting *China Unicom*,
 15 124 F.4th at 1148). And, just as with the Venezuela vacatur, Secretary Noem's attempt to
 16 retroactively change "the expiration of the most recent previous extension" of Haiti's TPS
 17 designation, thereby permitting termination before that date, contravenes the TPS statute's express
 18 provision that terminations "shall not be effective earlier than ... the expiration of the most recent
 previous extension" 8 U.S.C. § 1254a(b)(3)(B).

19 The Haiti partial vacatur also contravenes the TPS statute and regulations for two additional
 20 reasons. First, the TPS statute provides that the Secretary "shall" decide whether to extend or
 21 terminate a TPS designation "[a]t least 60 days before [the] end of the initial period of designation,
 22 and any extended period of designation" 8 U.S.C. § 1254a(b)(3)(A). But the Secretary published
 23 her "partial vacatur" of Haiti's July 2024 extension *205 days after* the end of the previous "period of

24 ⁶ Congress designed TPS to ensure nationality-based humanitarian relief would be based on
 25 "identifiable conditions" rather than "the vagaries of our domestic politics," 101 Cong. Rec.
 26 H25811, 25838 (daily ed. Oct. 25, 1989) (statement of Rep. Sander Levine) (debating Central
 American Studies and Temporary Relief Act of 1989, immediate precursor to the TPS statute);
 27 replace the "ad hoc, haphazard ... procedures" that existed before, *id.* at 25837 (statement of Rep.
 Richardson); and provide beneficiaries with certainty about "what [their] rights are, how the Justice
 Department determines what countries merit EVD status [and] how long they will be able to stay."
Id.

1 designation.” FAC ¶ 92; 88 Fed. Reg. 5022, 5023 (Jan. 26, 2023) (extending and redesignating Haiti
 2 for TPS through August 3, 2024). Accepting Defendants’ asserted authority to reconsider a TPS
 3 decision on that timeline would mean the Secretary could change her decision “after the [60]-day
 4 period had elapsed, thereby writing the [60]-day time limit”—and the default automatic extension
 5 that occurs if no decision is made by that time, 8 U.S.C. § 1254a(b)(3)(C)—out of the statute.⁷ *Am.*
 6 *Methyl v. EPA*, 749 F.2d. 826, 836-37 (D.C. Cir. 1984) (holding EPA lacked authority to revoke
 7 waiver where statute provided waiver applications were granted by default if EPA failed to act on
 8 them within a specific timeframe).

9 Second, as discussed above, *see supra* Pt. II.A.1, the Secretary lacks authority to invalidate
 10 documentation issued *before* the effective date of a notice purporting to alter a country’s TPS
 11 designation. 8 U.S.C. § 1254a(d)(3). The Supreme Court recently referenced that provision explicitly
 12 as to the Venezuela vacatur. *See supra*, Pt. II.A.1; Dkt. 144-1. Secretary Noem’s instruction that
 13 employment authorization documents issued to Haitian TPS holders under the July 1, 2024 extension
 14 and redesignation “with a February 3, 2026 expiration date” are now valid only through August 3,
 15 2025 directly contravenes the statute. 90 Fed. Reg. 10511 at 10514.

16 **2. The Partial Vacatur of Haiti’s Extension and Redesignation Failed to
 17 Observe Procedure Required by Law and Was Pretextual and Contrary
 to Law**

18 Even if the Secretary had authority to partially vacate Haiti’s extension and redesignation,
 19 Plaintiffs have adequately alleged that the partial vacatur violated the APA because Secretary Noem
 20 failed to follow statutorily required procedures and because the reasons she gave for her decision
 21 were pretextual and contrary to law. FAC ¶ 210(j)-(k).

22 The Secretary failed to follow statutorily required procedures. As described, *supra* Pt.II.A.2,
 23 the TPS statute requires “consultation with appropriate agencies of the Government” and a “review
 24 [of] the conditions in the foreign state” prior to any decision about a country’s TPS designation. 8

25
 26 ⁷ Further, even where implied reconsideration authority exists, it must be exercised within a
 27 reasonable time, generally measured in weeks. *Mazaleski v. Treusdell*, 562 F.2d 701, 720 (D.C. Cir.
 28 1977) (considering whether failure to accept agency reconsideration offer precluded claim based on
 original offer where no party challenged agency’s authority to reconsider). Even if the Secretary’s
vacatur decision as to Venezuela could be defended on that basis, the Haiti vacatur cannot be.

1 U.S.C. § 1254a(b)(3)(A). Plaintiffs have adequately alleged that the partial vacatur violated the
 2 APA because the Secretary failed to observe these statutorily required procedures. FAC ¶ 210(a),
 3 (k); 5 U.S.C. § 706(2)(D). It is clear from the face of the Partial Vacatur notice that the Secretary's
 4 decision was not based on consultation with the State Department or any other agency.⁸ Compare 90
 5 Fed. Reg. 10511 (failing to state that decision was made in consultation with any other agency) *with*,
 6 *e.g.*, 81 Fed. Reg. 66059, 66060 (Sept. 16, 2016) (terminating TPS for Liberia “[b]ased on [country
 7 conditions] reviews and after consulting with DOS”); 65 Fed. Reg. 33356 (May 23, 2000)
 8 (terminating TPS for Kosovo based on “review of conditions by the Departments of Justice and
 9 State”). Nor was it based on any review of country conditions; rather, the Secretary stated only that
 10 she would review country conditions at some future time. *Id.* at 10514 (“The Secretary intends to
 11 conduct a review of current country conditions in Haiti and make a new determination *in due
 12 course.*”) (emphasis added).

13 The CAR for the Haiti partial vacatur confirms the plausibility of Plaintiffs' claim. It
 14 includes no recommendation from the Department of State and no country conditions reports
 15 compiled in connection with the partial vacatur. *See Index of Haiti Partial Vactur CAR*, Dkt. 110-1.
 16 Instead, it includes only the recommendations and country conditions reports supporting the July 1,
 17 2024 extension and redesignation. *Id.*; Dkt. 110-4 at HT Vacatur AR_0331-0344 (February 2024
 18 DOS recommendation and country conditions report); Dkt. 110-5 at HT Vacatur AR_0473 (January
 19 2024 USCIS country conditions report).

20 *The Secretary's explanation for the partial vacatur was pretextual.* Plaintiffs have adequately
 21 alleged that the partial vacatur of Haiti's TPS extension and redesignation was a preordained
 22 decision based not on the reasons given in the partial vacatur notice, but rather, like the Venezuela
 23 vacatur, on “the desire to totally undo Secretary Mayorkas's decision.” Dkt. 93 at 59. *See* FAC ¶
 24 210(j). Indeed, just as with the Venezuela vacatur, Defendants *concede* that the ultimate purpose of
 25 the Haiti partial vacatur was to “afford[] [Secretary Noem] the opportunity” to make a new decision.
 26 Mot. 23-24.

27 ⁸~~The same is true for the Venezuela vacatur, which is another reason that decision violated the APA
 28 even if the Secretary had vacatur authority. See 90 Fed. Reg. 8805 (failing to state decision was
 made in consultation with any other agency or was based on any country conditions review).~~

1 The partial vacatur “cannot be adequately explained in terms of” the reasons provided by
 2 Secretary Noem in the Federal Register. *Dep’t of Com.*, 588 U.S. at 783. Those reasons—that
 3 Secretary Mayorkas did not explain why he chose an 18-month period or why he concluded that
 4 extension and redesignation were not contrary to the national interest, and that he cited both
 5 contemporaneous and slightly older country conditions reports—could be invoked to vacate *all*
 6 previous TPS extensions, because they are not flaws but rather standard features of TPS decisions.
 7 “[N]o Secretary has ever explained in the Federal Register why they chose a particular duration
 8 rather than an alternative.” FAC ¶100. Nor have Secretaries typically elaborated on their national
 9 interest conclusions, which would require proving a negative.⁹ *Id.* ¶ 103. *Cf. Hernandez v. USCIS*,
 10 No. C22-904 MJP, 2023 WL 7386573, at *9 (W.D. Wash. Nov. 7, 2023) (“[A]n agency may act
 11 arbitrarily and capriciously where it requires [an applicant] to prove a negative.”). Finally,
 12 “Secretaries have traditionally considered facts both close in time to and further from the
 13 determination” when conducting a TPS periodic review. FAC ¶ 104.¹⁰

14 Because Secretary Noem’s stated justification for reconsideration would apply equally to *all*
 15 previous TPS extensions and redesignations, it fails to explain why Haiti’s extension and
 16 redesignation specifically were selected for reconsideration instead of other TPS extensions. *See*,
 17 *e.g.*, 90 Fed. Reg. 5936 (Jan. 17, 2025) (extending Ukraine’s TPS designation for 18 months without
 18 explaining why the Secretary chose an 18-month period or concluding that extension was not
 19 contrary to the national interest, and citing both contemporaneous and slightly older country reports).

20 The focus on Haiti *is* explained, however, by public statements from Secretary Noem,
 21 President Trump, Vice President Vance and DHS itself. *See* Dkt. 129 at 4-6 (noting that the showing
 22 of bad faith for the Venezuela decisions would apply to Haiti, including “disparaging statements

23 ⁹ Defendants assert that the Haiti partial vacatur was rooted in national interest and foreign policy
 24 considerations, Mot. 22, but the notice references national interest only to critique Secretary
 25 Mayorkas’s alleged failure to properly consider that criterion; it does not suggest Secretary Noem
 26 made a determination regarding whether the continued presence of Haitian TPS holders in the
 27 United States is contrary to national interest. 90 Fed. Reg. 10511 (Feb. 24, 2025). *Id.* Indeed, such a
 28 conclusion would be inconsistent with her having extended TPS for Haiti for 12 months. Nor does
 the notice mention foreign policy concerns.

10 ¹⁰ The CAR for Secretary Noem’s decision terminating TPS for Venezuela indicates that even
 Secretary Noem considered 2021 and 2023 country conditions reports in making her decision. Dkt.
 104 (CAR Index, citing VT AR 78-85, 165-209, 253-71, 461-92).

1 discussed in the postponement order ... by President Trump that Haitian immigrants in Springfield,
 2 Ohio, were eating people's pets"). In a press release issued to announce the partial vacatur, DHS
 3 cited as proof for its belief "the TPS system has been exploited and abused" that "Haiti has been
 4 designated for TPS since 2010, with each extension ... allow[ing] more Haitian nationals, even those
 5 who entered the U.S. illegally, to qualify for legal protected status."¹¹ FAC ¶ 92. *See also* FAC ¶ 107
 6 (Secretary Noem: "[TPS] has been abused and manipulated by the Biden Administration and that
 7 will no longer be allowed ... and these extensions going forward the way that they are, the program
 8 was intended to be temporary"); FAC ¶ 112 (President Trump: "You have to remove [Haitians]; you
 9 cannot destroy our country ... In my opinion, it's not legal Absolutely I would revoke [TPS].");
 10 FAC ¶ 114, 116 (Vice President Vance: "The media loves to say that the Haitian migrants, hundreds
 11 of thousands of them, by the way ... they are here legally. And what they mean is that Kamala
 12 Harris used two separate programs, mass parole and temporary protective status Well, if Kamala
 13 Harris waves the wand illegally and says these people are now here legally, I'm still going to call
 14 them an illegal alien").

15 The CAR for the Haiti partial vacatur confirms the plausibility of Plaintiffs' pretext claim.
 16 Dkt. 110. Nothing in it substantiates the reasons the Secretary gave to explain the partial vacatur in
 17 the Federal Register. To the contrary, it is made up almost entirely of old Federal Register notices
 18 regarding Haiti's designation, documents from cases challenging the termination of TPS for Haiti
 19 during the first Trump Administration, and documents considered by *Secretary Mayorkas* in arriving
 20 at his July 2024 decision to extend and redesignate TPS for Haiti. The *only* document in the CAR
 21 that post-dates Secretary Mayorkas's decision—other than the partial vacatur notice itself and a one-
 22 page "record of clearance and approval" for that decision—is President Trump's Executive Order
 23 "Protecting the American People Against Invasion." *See* CAR Index, Dkt. 110-1.

24 Because "the evidence tells a story that does not match the explanation the Secretary gave for
 25 [her] decision," Plaintiffs have adequately alleged a claim that the partial vacatur is pretextual in
 26

27 ¹¹ Press Release, DHS, Secretary Noem Rescinds Previous Administration's Extension of Haiti's
 28 TPS (Feb. 20, 2025), <https://www.dhs.gov/news/2025/02/20/secretary-noem-rescinds-extension-haitis-temporary-protected-status>.

1 violation of the APA. *Dep’t of Com.*, 588 U.S. at 784. *See also* Dkt. 129 at 5.

2 The partial vacatur was contrary to law. The partial vacatur was also contrary to law for two
 3 reasons. First, the Secretary justified the partial vacatur on the ground that Secretary Mayorkas had
 4 failed to adequately consider the national interest. FAC ¶ 96. But, as explained above, the statute
 5 does not permit the Secretary to consider national interest when reviewing an existing TPS
 6 designation. *See supra* Pt. II.B.2. By basing vacatur of the extension on a supposed “fail[ure] to
 7 evaluate” whether allowing Haitian nationals to remain would be “contrary to the national interest,”
 8 Mot. 20, Secretary Noem misinterpreted the TPS statute and inserted a legal requirement for TPS
 9 extension that does not exist.¹² FAC ¶¶ 210(e), (i).

10 Second, the partial vacatur was based on the Secretary’s legally erroneous conclusion that the
 11 TPS statute has a default six-month extension period. Contrary to Secretary Noem’s statement, there
 12 is no “default” period for TPS extensions. Rather, the TPS statute allows a period of 6, 12, or 18
 13 months “in [the Secretary’s] discretion.” 8 U.S.C. § 1254a(b)(3)(C); FAC ¶¶ 101, 210(g). The six-
 14 month default applies only if the Secretary fails to make any determination. *Id.* Indeed, of more than
 15 200 TPS extensions since 1990, six-month extensions were granted on only a handful of occasions
 16 with unique circumstances. FAC ¶ 101. The overwhelming majority of TPS extensions in the past
 17 twenty years have been for 18 months. Resp. In Opp’n To Defs.’ Mot. For Stay Pending Appeal at
 18 Table A, *Nat’l TPS All. v. Noem*, No. 25-2120 (9th Cir. Apr. 11, 2025), Dkt No. 11.1, (88% of TPS
 19 extensions over past two decades have been for an 18-month period). Even assuming that there is a
 20 “default” six-month period, there is no requirement for a separate justification for extensions beyond
 21 the six-month period, and no such explanation was provided in previous extension decisions. 8
 22 U.S.C. § 1254a(b)(3)(C); FAC ¶¶ 210(e)-(g). The government does not claim otherwise. In fact, over
 23 the 35-year history of the statute, in virtually all cases in which Secretaries designated or extended
 24 TPS for a country, they announced the length of the designation without elaborating their reasons for
 25 choosing that duration and not another. FAC ¶ 99. Secretary Noem’s partial vacatur for Haiti TPS is
 26 itself consistent with that practice—it does not explain why she chose a twelve-month period. *Id.*

27 ¹² Plaintiffs raise this argument only as to the partial vacatur of the *extension*, and not the partial
 28 vacatur of the redesignation. National interest is a permissible consideration at the redesignation stage.

1 **III. Plaintiffs Adequately Alleged that the Challenged Decisions were Unconstitutionally**
 2 **Motivated by Animus (Fourth Claim)**

3 This Court previously held that Plaintiffs adequately alleged a constitutional claim with
 4 regard to the Venezuela vacatur and termination decisions. Dkt. 93 at 59-75. Further, this Court has
 5 recognized that “much of the reasoning in [the postponement] order would apply to the decision
 6 made with respect to Haiti as well,” noting that “the disparaging statements discussed in the
 7 postponement order included statements by President Trump that Haitian immigrants in Springfield,
 8 Ohio, were eating people’s pets.” Dkt. 129 at 5 (finding that “there is a factual basis” for Plaintiffs’
 9 assertion that the government’s reasons to partially vacate TPS for Haiti “were pretextual and/or
 10 taken in bad faith”). Defendants present no reason to reconsider the Court’s reasoned analysis here.
 11 Plaintiffs also adequately allege a constitutional claim regarding the Haiti partial vacatur under any
 12 standard of review, and Defendants’ arguments otherwise are unavailing.

13 This Court previously rejected Defendants’ assertion that *Trump v. Hawaii*, 585 U.S. 667
 14 (2018), supplies the correct standard of review. Dkt. 93 at 59-63. Defendants again overread *Hawaii*,
 15 asserting the “Supreme Court has been clear” that deferential review applies to any “immigration
 16 policy.” Mot. 22. This is false. Indeed, after *Hawaii*, the Supreme Court applied the *Arlington*
 17 *Heights* standard to a race discrimination claim brought by undocumented immigrants challenging
 18 the rescission of an immigration policy. *See DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 34
 19 (2020) (plurality). Lower courts have done the same. *See United States v. Suquilanda*, 116 F.4th 129,
 20 139-40 (2nd Cir. 2024) (reviewing challenge to 8 U.S.C. § 1326 under *Arlington Heights*);
 21 *Washington v. DHS*, 598 F.Supp.3d 1051, 1070 (E.D. Wash. 2020) (collecting cases). During the
 22 *Ramos* TPS litigation, every judge of the Ninth Circuit to consider the question concluded that
 23 review under *Arlington Heights* was proper. *See Ramos v. Wolf*, 975 F.3d 872, 896 (9th Cir. 2020)
 24 (vacated panel majority); *id.* at 925 (Christen, J., dissenting). As this Court previously found, the
 25 factors in *Hawaii* counseling in favor of rational basis review are inapplicable in the context of a
 26 challenge to a decision by the Secretary, pursuant to a statute that constrains her discretion, on behalf
 27 of lawfully present individuals within the U.S. Dkt. 93 at 60-62. Defendants have no answer to this.
 28 *See* Mot. 24 (relying on *Hawaii* as authority for deference to the *President*, but not the *Secretary*).

1 Plaintiffs' allegations nonetheless state a plausible claim of impermissible animus even under
 2 the deferential *Hawaii* standard of review. The "four corners" of the challenged decisions, along
 3 with "extrinsic evidence" considered only "to the extent of applying rational basis review," show the
 4 Secretary's actions were not rationally related to her stated goals. *Hawaii*, 585 U.S. at 704-05. This
 5 Court already held as much with regard to the Venezuela vacatur and termination decisions.¹³ Dkt.
 6 93 at 64-75 (Secretary Noem and President Trump made discriminatory statements about
 7 Venezuelan migrants and TPS holders in general which "play[ed] on 'longstanding tropes or
 8 stereotypes that certain races have inherently immoral traits,'" and both the statements and the
 9 rationales provided for the challenged actions lack a factual basis); Dkt. 102 at 4 ("[E]ven if the
 10 deferential review of *Trump v. Hawaii*, 585 U.S. 667 (2018), were to apply ... [b]ased on the record
 11 evidence on the motion to postpone, Plaintiffs have raised at least a serious question whether, in fact,
 12 the Secretary's actions are plausibly related to her stated objective."

13 The same is true with regard to the partial vacatur of the Haiti TPS designation. Defendants
 14 argue that the partial vacatur was legitimate because a "six-month rollback" would allow the
 15 Secretary to assess whether continuing TPS would be in the national interest. Mot. 23, citing 90 Fed.
 16 Reg. at 10,513. But the TPS statute would have *required* her to conduct an assessment in due time.
 17 And Defendants' argument confirms that Plaintiffs adequately pleaded facts showing the Secretary's
 18 stated justifications are pretextual—the Secretary's true motivation was to advance the review, and
 19 potential for termination, of TPS for Haiti. Moreover, the justifications within the Federal Register
 20 notice are contrary to legal requirements and historical practice. As elaborated above, there is no
 21 requirement that Secretaries explain why they are designating a country for a certain period of time,
 22 and in fact virtually all TPS extensions over the past two decades have been for an 18-month period
 23 without explanation; extension decisions consistently and properly rely partly on older data; and, as
 24 explained above, *see supra* Pt. II.B.2, national interest is not a permissible reason to terminate a TPS

25¹³ As they did before, Dkt. 60 at 18-20, Defendants conflate the Venezuela vacatur and termination
 26 decisions to challenge Plaintiffs' unconstitutional animus claim as to the vacatur. Defendants do not
 27 mount any argument why Plaintiffs' allegations do not state a claim as to the vacatur, pointing
 28 instead only to reasons provided in the termination notice. *See* Mot. 23. By conflating their analysis
 of the two agency actions, Defendants further substantiate Plaintiffs' claim that the stated reason for
 the vacatur was mere pretext manufactured to justify the intended termination.

1 designation. Because the partial vacatur was not based on a rational or plausible justification,
 2 Plaintiffs' allegations suffice under even rational basis review.

3 In any case, the correct standard is set forth in *Arlington Heights*, Plaintiffs easily allege facts
 4 “rais[ing] a plausible inference that an ‘invidious discriminatory purpose was a motivating factor’”
 5 for the Secretary’s decisions. *Regents*, 591 U.S. at 34 (quoting *Arlington Heights*, 429 U.S. at 266).
 6 This Court has already found “the Secretary made sweeping negative generalizations about
 7 Venezuelan TPS beneficiaries *in toto*” and “decided to take *en masse* actions against” all of them:
 8 “the classic example of racism.” Dkt. 93 at 66. Defendants assert that Secretary Noem’s
 9 discriminatory statements are taken “grossly out of context,” Mot. at 24, but that is belied by the
 10 record evidence, which includes statements directly related to the challenged decisions. Dkt. 93 at
 11 64-66. Plaintiffs’ allegations further support finding animus under the remaining *Arlington Heights*
 12 factors, including the historical background of the decision, FAC ¶¶ 164-68; procedural and
 13 substantive departures from the normal sequence,¹⁴ *id.* ¶¶ 99-104; and the disparate impact of the
 14 official action on a disfavored minority, *see id.* ¶¶ 112-13, 134-39. Dkt. 93 at 72-75. Defendants’
 15 Motion entirely ignores these factors.

16 Defendants do not squarely challenge the adequacy of Plaintiffs’ allegations about the Haiti
 17 partial vacatur. *See* Mot. 23. But these also suffice under *Arlington Heights*. Plaintiffs sufficiently
 18 allege that the Secretary’s partial vacatur was motivated by animus against Haitians and, as
 19 elaborated above, her pretextual intent to review, and likely terminate, TPS for Haitians six months
 20 earlier than the law allows. The Secretary has also baselessly accused Haitian TPS holders of
 21 “exploit[ing] and abus[ing]” TPS. FAC ¶ 110. Her assertion that Haitians’ mere act of applying and
 22 qualifying for TPS is exploitation or abuse reflects her animus against them. Additionally, Secretary
 23 Noem invoked President Trump’s Executive Order *Protecting the American People Against*
 24 *Invasion* as “direct[ing]” her to limit TPS designations. 90 Fed. Reg. 10,513 (Feb. 24, 2025); *see*
 25 also FAC ¶ 153 (Secretary stated her TPS decisions reflected the President’s “desire” to see TPS

26 ¹⁴ The CAR now shows the Secretary did not actually consult with the State Department prior to
 27 vacating either the Venezuela or Haiti TPS extensions, contrary to Defendants’ assertion. Dkts. 103
 28 (index of CAR for Venezuela vacatur) & 110-1 (index of CAR for Haiti partial vacatur); *see* Mot.
 23.

1 “used properly,” and “when the President gives a directive, the Department of Homeland Security
 2 will follow it”). And Plaintiffs have sufficiently alleged that President Trump’s desire to limit TPS
 3 for Haitians is motivated by his animus against them. *See, e.g.*, FAC ¶¶ 112-113, 136-39.
 4 Accordingly, Secretary Noem’s explicit reliance on President Trump’s animus against Haitians to
 5 justify her partial vacatur further reflects her animus. *See* Dkt. 93 at 70 (“there is evidence *in this*
 6 *case* that President Trump directly influenced TPS policy and/or decision-making at issue”).

7 CONCLUSION

8 For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants’
 9 motion in its entirety.

10 Date: May 28, 2025

11 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2025, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

ACLU FOUNDATION OF NORTHERN CALIFORNIA

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